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Mayor

CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date: March 14, 2006
Zoning and Planning Action Date: May 8, 2006
Board of Aldermen Action Date: May 15, 2006
90-Day Expiration Date: June 12, 2006

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris G. Alksnitis, Chief Zoning Code Official

SUBJECT: PETITION #102-06 of KESSELER DEVELOPMENT, LLC, Proposing to amend Section 30-15, Table 1, *Density & Dimensional Controls in Residential Districts and for Residential Uses*, by inserting in Table 1 a new Footnote (9) providing for a higher multi residence structure in the MR3 zone up to 4 stories and 48 ft. in height, subject to special permit and certain conditions.

CC: Mayor David B. Cohen
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: *Approve with modifications.*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

I. BACKGROUND

The subject petition is associated with a proposal, which is part of an overall plan to develop a portion of the former Boston Edison land, also known as Kessler Woods. The City and the applicant, Cornerstone Corporation, agreed to work together per the Cooperative Bidding Agreement Regarding Kessler Woods Property, and following a complex bidding process held by Boston Edison, became owners of various portions of the Kessler Woods property. At this time, one larger multi-family dwelling structure with several attached townhouse structures situated around the larger structure is proposed under revised plans.

In order to implement this development, several key actions will be needed as follows:

- Amendment of the Newton Zoning Ordinance, Section 30-15, Table 1 to allow by special permit multi-family dwelling structures up to 4 stories and 48 ft. (current limit: 3 stories and 36 ft.) in the MR-3 zone.
- Rezoning of parcel H-1 from SR-3 to MR-3
- Special permit and site plan approval for multi-family dwelling and attached dwelling unit development and related zoning relief, to the extent necessary.

It is noted that the applicant has filed concurrent petitions addressing each of the above. While this memorandum will address the proposed Zoning Ordinance text amendment, also see the Planning and Development Department memorandum reviewing Petitions #102-06(2) – proposed rezoning from SR-3 to MR-3, and #102-06(3) – requesting special permit and site plan approval.

II. EXISTING ORDINANCE AND PROPOSED AMENDMENT

At the present time, the City's Zoning Ordinance does not allow multi-family dwellings exceeding 3 stories and 36 ft. in height in Multi-Residence zones. The language submitted under the subject petition proposes to add a new Footnote 9 applicable solely to multi-family dwellings in the MR-3 zone only as follows:

(9) allowed by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 10 acres, the distance from the street to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet.

The purpose of the proposed footnote is allow multi-family dwellings up to 4 stories and 48 ft. in height solely in the MR-3 zone on sites having a minimum of 10 acres, subject to special permit and provided certain building placement buffer conditions are met.

III. ANALYSIS.

General

The City's Zoning Ordinance, Section 30-1, Definitions, describes a multi-family dwelling as follows:

Dwelling, multi-family -- A building or structure containing three (3) or more dwelling units.

Multi-family dwellings as a use (previously also known as "More than two dwelling units on a lot") has been available since adoption of the City's first Zoning Ordinance in 1922. When in 1987 the City updated the Zoning Ordinance and renamed the then existing Private Residence, and Residence D-F multi-family zones to MR-1 – MR-4 zones, multi-family dwellings could be developed pursuant to special permit in MR-2 zones with 3 stories up to 36 ft. in height and in MR-3 zones with 6 stories up to 60 ft. in height. In subsequent years, the Board of Aldermen intentionally reduced building stories and height in both Single- and Multi-Residence zones. On April 23, 1997, the Board adopted Ordinance #V-111 reducing the height limit in MR-2 zones from 36 ft. to 30 ft. while retaining 3 stories. A few years later on June 19, 2000, the Board of Aldermen adopted Ordinance #V-307 reducing stories from 6 to 3, and height from 60ft. to 36 ft. in MR-3 zones. However, multi-family use in conjunction with on-site ancillary services continues to be available in the MR-4 zone where stories and height are not regulated under Table 1, yet are subject to review and approval pursuant to the special permit process.

At the present time, the City's Zoning Ordinance allows multi-family dwellings subject to special permit in MR2-4, BU1-4, and MU 1-2 zones. In addition, multi-family dwellings are allowed as of right in BU1-4 and MU2 zones on lots meeting certain threshold frontage, lot area, and lot area/dwelling unit requirements when located above commercial uses occupying the first floor, and where buildings do not exceed specified height, gross floor area, and FAR limits. Minimum frontage, lot area, and lot area per unit requirements are established for all multi-family dwellings in Section 30-15, Table 1, *Density & Dimensional Controls in Residence Districts and for Residential Uses* (Table 1) along with other applicable controls for residential zones. For multi-family dwellings in commercial and mixed use zones, the respective complementary applicable controls are set out in Section 30-15, Table 3, *Dimensional Requirements for Commercial Districts* (Table 3).

Proposed changes to MR-3 in Section 30-15, Table 1

The following table compares the proposed height and story provision with selected existing requirements pertaining to multi-family dwellings where allowed in MR zones. No change is proposed to the maximum building lot coverage (45%) or minimum open space (30%) required in the MR-3 zone, nor to any limitations established in commercial or mixed use zones.

Zone	Spec. Perm	Lot area; Lot Area/du	Frontage	Max. Height and Stories	FAR	Minimum Setbacks	Building Placement
MR-2	Yes	10,000 sq. ft. 3,000 sq. ft./du	80 ft.	30 ft. 3 stories	Unreg.	F:25 ft. S:7.5 ft. R:15 ft.	None
MR-3	Yes	10,000 sq. ft. 1,200 sq. ft./du	80 ft.	36 ft 3 stories	Unreg.	F:15 ft. S:1/3 ht. R:1/2 ht.	None
MR-3 Prop Fn (9)	Yes	10 acres 1,200 sq. ft./du	80 ft.	48 ft. 4 stories	Unreg.	F:15 ft. S:1/3 ht. R:1/2 ht.	From street: 150 ft. From abutting lots: 75 ft.
MR-4	Yes	3 acres 1,000 sq. ft./du	Unreg.	Height: unreg. 3 stories	Unreg.	F:50 ft. S:50 ft. R:50 ft.	Separation on same site: 2x ht.; min. 50 ft.

Note: proposed changes are indicated in **bold** above.

Multi-family dwellings having a maximum height of three stories and 36 ft. may currently be built in the MR-3 zone, subject to grant of a special permit by the Board of Aldermen. In addition, Section 30-15(h) provides that the Board of Aldermen may grant a special permit in MR-3 for the construction of residential buildings “*..in excess of the number of stories and height permitted as of right..*” up to such height and stories available subject to special permit as enumerated in Table 1. However, at present there is no option to build multi-family dwellings “as of right” in this zone. As FAR is not stated, intensity of development on any particular site is governed by the applicable maximum building lot coverage limits and minimum open space requirements, in conjunction with the special permit site plan review process.

The proposed change will make possible, subject to special permit, -- an increase in building size by one story (up to 4 stories), and by 12 ft. (up to 48 ft. in height), provided the site is at least 10 acres. In addition, building placement must be at least 150 ft. from a street and no closer to an abutting lot line than 75 ft.

While the proposed text would enable the construction of additional building height, volume, dwelling units, and floor area, the applicant seeks to balance impacts generated by increased development intensity through significantly increasing minimum required lot area and instituting building placement distances to buffer abutting properties. The proposed 10-acre minimum site requirement exceeds by a factor of 43 times the existing minimum lot area requirement of 10,000 sq. ft. While the applicant seeks to institute an additional buffering requirement *which is not intended to replace existing setbacks*, it is noted that the proposed 150 ft. separation distance from the street is 10 times the front setback of 15 ft., and the 75 ft. abutting property separation distance is about 6 times the maximum required side-yard of 12 ft., and about 4 times the maximum required rear yard of 18 ft., respectively. When compared with “cluster development” provisions found in Section 30-15(k) *Open Space Preservation Development*, minimum site area is 5 acres, which is required in Single Residence (SR) as well as Multi Residence (MR) zones for projects seeking to concentrate development so as to facilitate preservation of open space.

Although well intentioned, the proposed additional requirements may be excessive when compared with existing requirements in MR zones as can be seen in the above table. For example, in the MR-4 zone, it is currently possible to have a multi-family dwelling with certain amenities, such as accessory dining rooms and convenience business services including barbershops, newsstands, drugstores, food stores, and the like, subject to special permit and subject to certain gross floor area limitations, provided the lot has a minimum area of 3 acres. In addition, larger setbacks of 50 ft. all around, and a minimum building separation requirement of 50 ft. for buildings on the same lot apply, as this reflects an intensification of use within a residentially zoned site. While the accessory uses are similar to commercial uses more typically found in business zones, they are included and allowed in the MR-4 zone within certain gross floor area limits, so as to serve the internal needs of the residential community located within a multi-family building or complex.

It is also noted that no “special” building placement requirements are reflected in current requirements for MR zones in general.

Future development implications

The City of Newton Recreation and Open Space Plan, 2003-07 indicates in its Open Space Inventory that relatively few privately owned properties remain in Newton, which have an area of 10 or more acres other than Kessler Woods. Six parcels are owned by religious and educational institutions, and another four are held by various other entities. The three largest parcels, each exceeding 10 acres and together totaling approximately 545.6 acres are held by three country clubs. All of the properties are affected by wetland regulations to some extent; many have wetlands and/or conservation restrictions of various types, while institution-owned properties typically contain campuses with existing buildings. When considering privately held parcels having 5 – 10 acres with hypothetically available developable area, only six additional properties are found in the subject Inventory. Of these, three have wetlands and/or conservation restrictions, one has a historic preservation restriction, another has extensive rock formations, and yet another has a pond. In the range of 3-5 acres, only six more privately held parcels are identified in the Inventory. Of these, one is surrounded by City-owned recreation and conservation lands, two are subject to riverine and/or wetlands regulations, two contain educational institutions, and another parcel is largely developed with the facilities of a long –standing community non-profit social service organization. As a result, it is unlikely that either a 3-acre or a 5-acre minimum lot area would add many parcels to the mix of potentially developable land for rezoning to MR-3. However, a 3-acre or a 5-acre minimum would increase the hypothetical number of parcels, which may be subdivided from large currently undeveloped parcels. In

any event, all development of multi-family residential buildings would continue to be subject to the site plan review and special permit process.

Of the above-mentioned possibilities, the current single-family zoned country club properties present significant opportunities for future development and may generate interest for rezoning to higher density residential use. Should this occur, it is likely developers will consider one or more development options currently available in MR zones as well as any increase in development potential as may be made available should the current or a modified proposal be adopted.

IV. SUMMARY AND RECOMMENDATIONS

The intent of the proposed new Footnote (9) in Table 1 is to make possible the development of multi-family dwellings up to 4 stories and 48 ft. in height in the MR-3 zone, subject to special permit, significantly increased minimum lot area (10 acres), and extensive new building placement requirements (150 ft. and 75 ft.) as discussed above. While the petition is offered in conjunction with the Kessler Woods project, the proposed text amendment will affect all MR-3 zoned areas in Newton. The proposed change will have the effect of increasing available building size in currently MR-3 zoned areas and by extension, also in lower density residentially zoned areas of sufficient size, which might be perceived as candidates for rezoning to MR-3.

The large increase in minimum lot size and the addition of significant building placement buffering requirements are intended to lessen impacts of such correspondingly larger, more intensive multi-family dwellings as would be possible under the proposed new Footnote (9). These requirements will serve to limit development of 4 story/48 ft. multi-family residential buildings to those sites with capacity to satisfy these more stringent requirements. However, it is also noted that these much more restrictive requirements may be excessive when compared with existing MR lot area and dimensional controls. It is noted that any increase in height and stories would also be subject to special permit and site plan review which enables the Board of Aldermen to undertake detailed scrutiny of proposed plans and require such mitigation requirements as the Board deems appropriate. In comparison, existing minimum lot area requirements and setback requirements in the MR-4 zone for multi-family dwellings having on-site accessory dining and commercial uses, has a minimum site area of 3 acres and 50 ft. setbacks all around.

The Planning and Development Department recommends that the Board of Aldermen:

Adopt a new Footnote (9) applicable to multi-family dwellings in the MR-3 zone with the following modifications:

- ***Decrease minimum site area to 3 acres;***
- ***Replace building placement buffering distance from street of 150 ft. with front setback of 50 ft; and***
- ***Replace building placement buffering distance from adjacent lot lines of 75 ft. with side and rear setbacks of 50 ft.***